

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**RESOLUTION NO. 94-051**

**RECOMMENDATION FOR WATER QUALITY CERTIFICATION  
FOR  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
ROUTE 17 AT LEXINGTON RESERVOIR  
INTERCHANGE PROJECT  
SANTA CLARA COUNTY**

**WHEREAS, the California Department of Transportation (Caltrans) has applied to the State for Water Quality Certification under Section 401 of the Federal Clean Water Act for the filling of 2.8 acres of waters of the United States (includes 2.7 acres of the Lexington Reservoir as waters of interstate commerce and 0.1 acre of the adjacent drainages as other waters of the United States) which have been delineated as such under Section 404 of the Federal Clean Water Act; and**

**WHEREAS, these open water reservoir and adjacent drainages will be filled in the course of providing safe access between Route 17 and five local roads; and**

**WHEREAS, the Regional Board under Section 401 of the Clean Water Act reviews applications to determine if the proposed activity will meet State water quality objectives for Water Quality Certification for the proposed activity; and**

**WHEREAS, Water Quality Certification is a certification for an activity that requires a federal license or permit that there is reasonable assurance that the activity which may result in discharge to waters of the United States will not violate water quality objectives (Title 23, California Code of Regulations, Section 3830 et. seq.); and**

**WHEREAS, Caltrans submitted an application for water quality certification on November 9, 1993, and the Regional Board Executive Officer found it complete on March 8, 1994; and**

**WHEREAS, the California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (EIR or Negative Declaration) for such projects; and**

WHEREAS, Caltrans prepared an Environmental Impact Report for this project and signed it on July 27, 1993; and

WHEREAS, the 2.8 acres of Waters of the United States proposed to be filled contain areas composed of hydric soils that are periodically inundated with surface and groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, and are therefore defined as a wetland according to 40 CFR 122.2; and

WHEREAS, these areas covered by wetland and riparian vegetation provide valuable habitat for resident and migratory birds of a wide variety of species as well as providing wildlife habitat; and

WHEREAS, the Regional Board, in Resolution No. 87-106, dated August 19, 1987, adopted, in accordance with Section 13244 et. seq. of the California Water Code, amendments to the Water Quality Control Plan, San Francisco Bay Basin (Basin Plan) that established a policy for regulating wetland fill (however, this policy has not been approved by the State Office of Administrative Law); and

WHEREAS, the proposed Basin Plan Wetland Fill Policy seeks to establish that there be no net loss of wetland acreage and no net loss of wetland habitat value when the project and the proposed mitigation are evaluated together and that mitigation for wetland fill projects be located in the same area of the Region, wherever possible, as the project; and

WHEREAS, Caltrans has submitted an alternatives analysis that addresses the requirements of Section 404(b)(1) of the Clean Water Act and the Regional Board has utilized this alternatives analysis in their consideration of the case; and

WHEREAS, Section 13142.5 of the California Water Code requires that the "Highest priority shall be given to improving or eliminating discharges that adversely affect...Wetlands, estuaries, and other biologically sensitive sites."; and

WHEREAS, Senate Concurrent Resolution No. 28 states that, "It is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for the benefit of the people of the State."; and

WHEREAS, the discharge of fill material into the wetlands of the project site will cause a condition of pollution to exist in these waters of the State by altering the quality and quantity of water in the area, that is needed to support wetland beneficial uses, to a degree that will eliminate the beneficial uses of these waters of the State; and

WHEREAS, Caltrans has proposed mitigation measures, as part of the application for Water Quality Certification and the Habitat Mitigation and Monitoring Plan, to offset the loss of beneficial uses of waters of the State, resulting from the discharge of fill material into the wetlands of the State at the project site; and

WHEREAS, the proposed mitigation involves the creation of 3.2 acres of new open water and 0.9 acre of the wetlands ; and

WHEREAS, the proposed new open water and wetlands are considered in-kind habitat replacement for the open water and wetlands that will be lost due to the project on a greater than acre for acre basis; and

WHEREAS, the proposed mitigation plan will ensure that this project will not result in a net loss of wetland values or acreage and is therefore in compliance with the Basin Plan; now

BE IT THEREFORE RESOLVED, that this Regional Board recommends that the Executive Director of the State Water Resources Control Board grant Water Quality Certification pursuant to Section 401 of the Clean Water Act and State regulations in Title 23 California Code of Regulations Section 3830 et. seq., for the Caltrans Route 17 at Lexington Reservoir Interchange, Santa Clara County, with the provisions that:

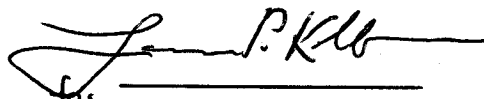
1. Caltrans shall not discharge, or create a potential for discharge, any soil materials, including fresh concrete, cement, silts, clay or sand, to storm drains or any creek or tributary.
2. Drainage and surface flows from the construction areas shall be controlled to prevent downstream erosion.
3. All surplus and waste materials shall be disposed of in an appropriate manner and location sufficient to prevent erosion and subsequent sedimentation.
4. By July 1st of each year and until the project, including the wetland mitigation, is completed, Caltrans shall submit to the Regional Board a technical report acceptable to the Executive Officer that contains: a review of the progress of erosion control measures, problems encountered, and solutions to these problems.
5. Prior to the initiation of any work, a final wetland mitigation and monitoring plan shall be submitted to the U.S. Army Corps of Engineers and the Regional Board Executive Officer for approval. The plan shall contain contingency measures to be implemented by the permittee should the monitoring plan identify the mitigation as not fully successful in offsetting

lost wetland functions and values within a five year period. The plan shall also contain detailed performance criteria and monitoring methods.

6. Annual monitoring reports shall indicate if modifications are needed to the mitigation and monitoring plan and point out appropriate steps to correct any deficiencies.
7. Caltrans must submit the annual monitoring reports, the as-built status report and the notice of completion to the Executive Officer of the Regional Board.
8. At all stages of the mitigation, success of the mitigation shall be determined by, and to the satisfaction of, the Department of Fish and Game and the Executive Officer of the Regional Board. Success criteria will be determined as specified in the approved mitigation and monitoring plan.
9. The Agreement Regarding Proposed Stream or Lake Alteration, obtained from the Department of Fish and Game covering all work to be performed in or near the creeks, shall be complied with.

BE IT FURTHER RESOLVED, that this Regional Board directs the Executive Officer to transmit this resolution to the Executive Director of the State Water Resources Control Board.

I, Steven R. Ritchie, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on April 20, 1994.

  
for Steven R. Ritchie  
Executive Officer